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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

URCHIN INDUSTRIES OF CALIFORNIA et al.,

Plaintiffs and Appellants,

v.

CONTRACTORS' STATE LICENSE BOARD et
al.,

Defendants and Respondents.

C030744

(Super. Ct. No.
98CS00164)

Plaintiff David J. Rawlins, owner of Urchin Industries of California (Urchin Industries), applied to defendant Contractors' State License Board (Board) for plumbing and swimming pool contractors' licenses. Rawlins also requested a waiver of examination for the swimming pool contractor's license. The Board denied Rawlins's request for a waiver. Rawlins brought a peremptory writ of mandate to compel the Board to waive the examination. The court denied the writ. Rawlins

appeals, arguing the Board is estopped from denying his request for waiver. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In 1967, prior to forming Urchin Industries, Rawlins took and passed the Board's licensing examination for a C-53 license (swimming pool construction). The Board issued Rawlins a license under the name Delta Plumbing & Pipelines, Inc. (Delta). The Board listed Rawlins as responsible managing officer (RMO) and as the qualifier on behalf of Delta for the license.

In 1974, Rawlins joined Geremia Pools, Inc., and placed his license for Delta on inactive status with the Board. Rawlins also removed himself as RMO for Delta. According to Rawlins, he changed to inactive status to prevent any unauthorized use of the license. He continued to hold the position of president of Delta. In the ensuing 15 years, Rawlins continued to pay periodic renewal fees levied by the Board.¹

In August 1985, according to Rawlins, he met with the Board's deputy registrar, Bob Berrigan, to discuss the status of his license. Rawlins learned his inactive status could invalidate his eligibility for a swimming pool contractor's license. Berrigan informed Rawlins that in order to maintain his license, the Board required him to be the RMO for Delta. Berrigan also stated that in order to reinstate himself as RMO of Delta, Rawlins need only send a letter to the Board

¹ The Board charges the same fee for both active and inactive status.

explaining the circumstances and requesting reinstatement. Rawlins sent a letter expressing his understanding that his action in removing himself as RMO of Delta had the unintended effect of "negating [his] qualifications as a pool contractor." The letter requested reversal of his action and his reinstatement as Delta's RMO. Attached to the letter was a license renewal application and fee.²

Rawlins never received a confirmation or other response to his correspondence, though the Board acknowledges receiving the letter. Delta subsequently merged into Urchin Industries. In May 1996, Rawlins filed an application on behalf of Urchin Industries for plumbing and swimming pool construction licenses. Relying on Delta's previous license, Rawlins sought reinstatement of the swimming pool construction license without retaking the licensing examination. The Board denied his application, citing Business and Professions Code section 7065.³ The Board noted that on September 13, 1974, Rawlins, the

² Rawlins's letter to Berrigan stated: "It would appear that my action in removing myself as RMO of [Delta] . . . had the effect of negating my qualifications as a pool contractor. My intent at the time was to ensure that other parties involved in the corporation would not be encouraged to continue in business. [¶] However, I have since learned that although I continued to pay the yearly license fees to maintain the corporation as an inactive company, my removal as RMO had the effect of negating my qualifications. Due to this misunderstanding, I therefore respectfully request that my action to remove myself be reversed and that I be reinstated as RMO of the corporation."

³ All further statutory references are to the Business and Professions Code.

qualifier for the license, disassociated from the license and Delta failed to replace him with another qualifier within 90 days. The license was "renewed inactive" but "expired on February 30 [sic], 1992."

Rawlins requested an administrative hearing to consider the waiver denial. The Board denied the request. Rawlins filed a writ of mandate to compel the Board to waive the examination for the license. Following lengthy oral argument, the court denied the petition, holding: "1. The provisions of Business and Professions Code (hereinafter the "Code") [section] 7065 dictate the specific requirements for exemption from the testing requirement of a person otherwise qualified. That exemption requires that within five years petitioner would have to have been the qualifying individual of a valid corporation. The petitioner in this case has been disassociated from the C-53 license for a period of 24 years. Petitioner did not meet the requirements for such an exemption under Code section 7065. [¶] 2. Petitioner claimed to have reassociated himself with the C-53 license in 1985 through a letter to a Mr. Berrigan at the Contractor's Board. The Court finds under principles of estoppel and other principles that the State should not be bound by a unilateral letter, the alleged effect of which was never confirmed on the license history of Petitioner, nor by any confirmation letters. The State is therefore not estopped from refusing to waive the examination requirements of the Code."

Rawlins filed a timely notice of appeal.

DISCUSSION

"In an administrative mandate proceeding in which the trial court has exercised its independent judgment on the evidence, the trial court's factual determinations are conclusive on appeal if they are supported by substantial evidence. As to questions of law, appellate courts perform essentially the same function as trial courts in an administrative mandate proceeding, and the trial court's conclusions of law are reviewed de novo." (*Jenron Corp. v. Department of Social Services* (1997) 54 Cal.App.4th 1429, 1434.)

The trial court found Rawlins failed to meet the requirements for waiver of the contractor's examination set forth in section 7065. Section 7065 states, in part: "No examination shall be required of a qualifying individual if, within the five-year period immediately preceding the application for licensure, the qualifying individual has either personally passed the written examination for the same classification being applied for, or has served as the qualifying individual for a licensee whose license was in good standing at any time during the five year period immediately preceding the application for licensure and in the same classification being applied for."

The evidence establishes that Rawlins voluntarily ceased serving as the RMO for Delta in 1974. Rawlins did not serve as the qualifier for the C-53 license issued to Delta, or as qualifier for any other C-53 licenses within the immediate five-

year period preceding his C-53 application made in 1996 on behalf of Urchin.

Rawlins argues that Berrigan, a Board deputy registrar, possessed the authority to correct the records and waive the examination requirement under section 7065. He asserts "respondents acknowledged that Bob Berrigan may have had the discretion to waive the examination." However, the Board's comment, when read in context, does not aid Rawlins's claim. The Board, in correspondence, stated: "Mr. Berrigan would not have had discretion to reverse the dissociation [*sic*] without an application and the proper fee. He may have had discretion to waive the examination *had the board made an error in disassociating Mr. Rawlins originally.*" (Italics added.)

Rawlins contends the Board is estopped from refusing to waive the examination.⁴ A party asserting estoppel against the government must prove: (1) the party to be estopped must be

⁴ In his brief, Rawlins characterizes his failure to request reinstatement as RMO earlier as a "mistake." At oral argument, counsel for Rawlins, citing regulatory provisions permitting the Board to grant relief for mistake, argued the Board had a mandatory duty to correct the record, thereby rendering him eligible for waiver of the examination requirement. Counsel asserted this duty exists irrespective of the obligations arising from estoppel. Even if we could consider an argument not properly set forth in an appellant's brief, Rawlins offers no support for the proposition that the Board was obligated to grant every claim for relief from mistake. We reject it. For whatever reason, Rawlins removed himself as the RMO for Delta and had not served in that capacity for 11 years at the time of his conversation with Berrigan and for almost 22 years before seeking reinstatement of his license and waiver of the examination requirement.

apprised of the facts; (2) the governmental agent must intend that his or her conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; (4) he or she must rely on the conduct to his or her injury; and (5) the party asserting estoppel must demonstrate that the injury to his or her personal interests if the government is not estopped exceeds the injury to the public interest if the government is estopped. Estoppel will not be applied against the government if to do so would effectively nullify a strong rule of policy adopted for the benefit of the public. (*Lusardi Construction Co. v. Aubry* (1992) 1 Cal.4th 976, 994-995; *Stewart v. City of Pismo Beach* (1995) 35 Cal.App.4th 1600, 1606.)

Generally, the doctrine of estoppel is disfavored and will only be applied where the party sought to be estopped has obtained some unconscionable advantage. (*Anza Parking Corp. v. City of Burlingame* (1987) 195 Cal.App.3d 855, 861.) Estoppel poses a factual question that must be pled and proven in the trial court. (*Walsh v. Board of Administration* (1992) 4 Cal.App.4th 682, 708.) The trial court's factual determination is conclusive on appeal unless the opposite conclusion is the only one that can be drawn from the evidence, at which point the existence of estoppel becomes a matter of law. (*City and County of San Francisco v. Grant Co.* (1986) 181 Cal.App.3d 1085, 1091.)

Rawlins contends the advice given by Berrigan in their 1995 meeting -- that reinstatement could be accomplished by a letter from Rawlins -- estops the Board from refusing to waive the examination requirement. Central to Rawlins's argument is his contention that he relied on Berrigan's comments to his injury. According to Rawlins, had Berrigan not advised him that his reinstatement as RMO could be accomplished by a simple letter, he could have taken steps to qualify for waiver of examination under Business and Professions Code section 7065.1 by "being added to the personnel" of another license. The Board's failure to notify him that he had not been reinstated left him ignorant of the true facts. Rawlins asserts the failure also violated Board regulations.

The trial court, while empathetic to Rawlins's situation, found the Board could not be bound by a unilateral letter that was never confirmed. In effect, the court found Rawlins could not reasonably rely on a unilateral letter. The court also noted that section 7065 dictates the specific requirements for exemption from examination and that Rawlins had not held a C-53 license for 24 years.

We agree with the trial court's evaluation of the evidence. Initially, we note the record contains two different versions of the meeting between Rawlins and Berrigan. In a 1996 letter to the Board, Rawlins states: "Mr. Berrigan lead [sic] me to believe that a notation . . . would be put in the file which would correct the matter and reinstate me as R.M.O." The letter contains no reference to Berrigan's request for a letter as a

prerequisite to reinstatement. In contrast, Rawlins's declaration in support of his petition states, "Bob Berrigan told me that all that was required was a letter from me to the Board explaining the circumstances, and requesting reinstatement."⁵

Regardless of what transpired in 1985 between Rawlins and Berrigan, we find no estoppel. Berrigan possessed no authority to reinstate Rawlins as RMO based on an explanatory letter, exempting him from the written examination required for reinstatement. Rawlins's license with Delta had been inactive for 11 years at the time of the meeting, necessitating his taking of the examination. As the Board points out, the applicable regulations at that time allowed *only* the Board registrar the discretion to waive the examination. Berrigan did not serve as registrar, but as a deputy registrar.

The unauthorized promise of an employee does not constitute grounds for an estoppel as to the governmental body by which he or she is employed where the means and limitations on its power to act are prescribed by statute. (*Page v. City of Montebello* (1980) 112 Cal.App.3d 658, 669 (*Page*).) Here, section 7065 governs exemptions to the examination requirement for a C-53 license.

Admittedly, "[e]stoppel has been invoked in a few exceptional cases where public policy interests compelled the

⁵ Berrigan retired many years ago.

court to hold the governmental entity to a promise. It is notable, however, that generally it is held that the power of a public officer cannot be expanded by application of this doctrine. A complaint, for example, which alleged that plaintiff accepted an offer of employment by the State Personnel Board on the representations of its employees that he would not be required to serve outside southern California; that he was ordered to serve outside the area and refused; and that his dismissal for that reason was wrongful is subject to general demurrer. (*Boren v. State Personnel Board* (1951) 37 Cal.2d 634 [234 P.2d 981].) The California Supreme Court in *Boren* refused to apply estoppel since 'To invoke estoppel in cases like the present would have the effect of granting to the state's agents the power to bind the state merely by representing that they have the power to do so. It is accordingly held that the authority of a public officer cannot be expanded by estoppel. [Citations.]' (*Id.*, at p. 643.)" (*Page, supra*, 112 Cal.App.3d at p. 667.)

Here, Berrigan lacked any authority to waive the examination requirement. To estop the Board from enforcing its own regulations would impermissibly expand the authority of a Board employee. While we understand the inconvenience to Rawlins, we cannot find the Board estopped from following the requirements codified in section 7065.

DISPOSITION

The judgment is affirmed. The Board shall recover costs on appeal.

RAYE, J.

We concur:

SCOTLAND, P.J.

HULL, J.